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November 26, 2003

By DHL Overnight Delivery

Chairman, Appeals Review Panel
c/o Appeals Officer
A/RPS/IPS/PP/IA, SA-2
Department of State
Room 6001
Washington, D.C. 20522-6001

RE: Archive FOIA Request No. 20010175DOS 034 (February 21, 2001)/Department of State Case No. 200100807

To the Appeals Review Panel:

I am writing on behalf of Thomas Blanton to appeal the excisions to the records released pursuant to the above reference FOIA request. I am attaching a copy of the original request and the denial letter to this appeal.

The original request sought:

[A] retrospective study written by the Department of State comparing decisions regarding Vietnam policy made in the Kennedy and Johnson administrations with the Department of State's own intelligence and analysis. This study was originally ordered in 1968 by Tom Hughes, then director of the Bureau of Intelligence and Research, and was first reported on in the Time magazine article attached.

The denial letter indicates that five documents were located in response to the request. Of these, one document was released in its entirety.¹ In the remaining four, portions were excised and withheld pursuant to FOIA Exemption (b)(1) because the information is "currently and properly classified under Executive Order 12958 in the interest of national defense or foreign relations." In three of the four partially withheld documents, additional material was excised and withheld pursuant to FOIA Exemption (b)(3) on the basis of the Central Intelligence Agency Act of 1949, 50 U.S.C. Sec. 403g. Although the specific basis for invocation of 50 U.S.C. Section 403g was not articulated in the denial letter, that provision protects "intelligence sources and methods from unauthorized disclosure," and protects against the "publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the [Central Intelligence] Agency."

¹ For ease of reference, please note that the released records are a five volume document (A-E). Several of the volumes also are organized into multiple sections. In this appeal, reference is made to the Volume, section and page number.

The first basis for this appeal is the unexplained failure to provide 9 pages in the release – Volume B.VI, pages 13-21. Department of State FOIA Regulations provide that when materials are denied, the agency will explain the basis for its denial. If the deletion of these 9 pages was an error, then we request that they be released. If they were redacted, then we request that we be provided with an explanation of the reasons for the denial and an opportunity to appeal that denial.

The second basis for the appeal is the numerous excisions from the pages that appear to relate to declassified, publicly known and acknowledged information. Suppression of this information fails to advance the purposes of Exemptions 1 and 3 of the Freedom of Information Act as the information already is in the public domain and can neither harm national security nor identify unknown sources and methods. The excisions, therefore, interfere with the purposes of the Freedom of Information Act by preventing full disclosure of the requested records.

Although we do not know the specific text of the excised portions of the document, there are certain operations and activities that have been widely publicized and officially acknowledged that, by their absence from the released records, appear likely to have been excised. These specific deletions – where we are able to identify them – are described below. A principal document referred to with respect to the public acknowledgment of these matters Ford, Harold P., *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968* (Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998), which is available on the CIA Web site at <<http://www.odci.gov/csi/books/vietnam/index.html>> and details numerous declassified documents concerning U.S. involvement in the Vietnam War. Therefore, we urge the Department of State to reconsider all of the excisions it required prior to the release of the records that are the subject of this appeal.

(1) All references to CIA or CAS involvement appear to be excised. It is well known and not a secret that CAS is an acronym for “controlled American source” and is a code name for the CIA. For example, CAS is defined by the Department of Defense as “Controlled American Source” and its role is widely discussed in the Department of Army publication *The Development and Training of the South Vietnamese Army 1950-1972*, (Washington, DC: Department of the Army, 1991) by James Lawton Collins, which is available on the Department of Defense Web site at <<http://www.army.mil/cmh-pg/books/Vietnam/devtrainrvn/>>. The CIA itself has released records that refer to both CAS and CIA involvement in Vietnam. See, e.g., Attachment A from CIA Web site.

In addition, the references to CIA knowledge of coup-plotting are already acknowledged, but are deleted from the released records. See, e.g., Ford, Harold P., *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968* at page 26-39 (Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998) (Attachment B). Excisions of references to CIA and CAS simply harm the credibility of the FOIA and declassification process by needlessly hiding well-publicized information.

(2) Excision of references to 34A operations and/or DeSoto Patrols – Throughout the documents references to 34A operations, the 1964 operations plan covering covert actions against North Vietnam, successor activities codenamed FOOTBOY, and/or Desoto patrols, used for intelligence collection along the North Vietnamese coast, appear to be deleted. These include likely references on pages: Vol. A.IV, pages 2, 34, 37; Vol. A.V, pages 22, 25; Vol. A.VII, pages 1-2; Vol. B.IV, page 30 (2 excisions); Special Annex II, pages 1 and 2. Some of these deletions also may relate to cross-border operations: Vol. A.IV, page 2; Vol. A.V, page 25; Vol. A.VII, page 2.

A significant amount of information about these operations has been declassified, and so providing unredacted pages that expose the deleted passages would not compromise any national security concerns, or expose any new sources or methods. See, e.g., (1) "National Security Action Memorandum 314," Department of State, S/S-NSC Files: Lot 72 D 316, NSAM 314. Top Secret (declassified) (Attachment C); and (2) the "MACV-SOG Documentation Study" that is among the Files of Sedgewick Tourison in the Records of the Senate Select Committee on POW/MIA Affairs. In addition, these operations have been acknowledged and described in numerous sources, including: *Foreign Relations of the United States 1964-1968*, vol. 1, Vietnam 1964, p. 611, 780. The cross border operations are extensively aired in the "MACV-SOG Documentation Study" referenced above. In addition, the CIA's involvement in these operations has been acknowledged. See, e.g., Ford, Harold P., *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968* at page 46 (Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998) (Attachment D).

(3) Excision of references to disputes about statistics and appraisals of the military balance presented by the United States Military Assistance Command, Vietnam (MACV) – Throughout the documents, well-established disputes between the Central Intelligence Agency, the State Department and MACV have been deleted. These include likely references on pages: Vol. A.II, page 14; Vo. A.III, page 9; Vol. A.IV, pages 11-12, 22; Vol. A.VI, pages 5, 14-18; Vol. A-VI, pages 16-18.

The military balance in Vietnam at the time of the Vietnam War is not a matter that merits exemption from release under FOIA. The disputes about the statistics and appraisals of military balance have been fully aired in publications such as: (1) Ford, Harold P. *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968, pages 1-23*. Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998 (Attachment E); (2) Sam Adams, "Vietnam Cover-up: Playing War with Numbers", *Harper's*, May 1975.; (3) Wirtz, James J. "Intelligence to Please? The Order of Battle Controversy during the Vietnam War." *Political Science Quarterly* 106, no. 2 at 239-263 (Summer 1991); (4) Hughes, Thomas L., "The Power to Speak and the Power to Listen" at p. 33, in *Secrecy and Foreign Policy*, eds. Thomas M. Franck and Edward Weisband. Oxford: Oxford University Press, 1974 (Attachment F). A significant amount of information about these disputes has been declassified, and so providing unredacted pages that expose the deleted passages would not compromise any national security concerns, or expose any new sources or methods.

(4) Excision of references to INR's role in the discussion about working with Diem – This includes excisions at Vol. A.II, page 15 that appears to relate to NIE 53-63, which has been declassified and released. See Ford, Harold P. *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968*. at pages 12-20, 28-34 Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998 (Attachment G).

(5) References to CIA and DIA involvement in joint memoranda regarding introduction of troops and CIA pessimism -- The deletions at Vol. A.V, pages 8, 9 and 17, appear to eliminate references to CIA and DIA involvement in joint memoranda on introduction of troops and the deletions at Vol. A.VI, pages 12-14, 19 and 26 eliminate references to CIA studies.

The involvement of these agencies has been publicly acknowledged. See (1) Ford, Harold P. *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968*, pages 41-43, 44-47, 73-83, Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998 (Attachment H); (2) Hughes, Thomas L. "The Power to Speak and the Power to Listen" at p. 33-34, in *Secrecy and Foreign Policy*, eds. Thomas M. Franck and Edward Weisband. Oxford: Oxford University Press, 1974 (Attachment I).

(6) Involvement of John McCone. The deletions at Vol. A.IV, pages 11-12 appear to eliminate reference to the role of John McCone in policy deliberations. This role is publicly known and has been openly discussed. See Ford, Harold P. *CIA and the Vietnam Policymakers: Three Episodes, 1962-1968*. at pages 6, 76-84, Washington, DC: History Staff, Center for the Study of Intelligence, Central Intelligence Agency, 1998 (Attachment J); *Conversation with John McCone*, Institute of International Studies, U.C. Berkeley (1987-1988) (available at <http://globetrotter.berkeley.edu/conversations/McCone/mccone-con5.html>).

(7) Deletion of information about Tonkin Gulf incidents – In Special Annex II there are deletions of information that appears to refer to Tonkin Gulf incidents, as well as the source of information to the U.S. Government about those incidents. An extensive amount of information about these incidents and the source of information about these incidents has been declassified and released to the public and therefore, there is no basis for these excisions.

In particular, there have been releases by the National Security Agency of intercepted North Vietnamese Navy radio messages relating to the incidents. Samples of these releases are attached for your reference. (Attachment K) Accordingly, I ask that you reconsider these deletions.

(8) Deletion of reference to Chinese Activities and/or Chinese-North Vietnamese cooperation. The involvement of China in the Vietnam War is not a secret. See, e.g., Attachment L from CIA Web site. China, itself, has publicly discussed its military involvement in the Vietnam War. In addition, U.S. intelligence reports regarding these activities have been declassified.

(9) North Vietnamese Infiltration into South Vietnam. Almost all of the released Vietnam National Intelligence Estimates includes information about infiltration. See, e.g., Attachment M.

(10) Title of SNIE 10-12-65. At Vol. A.V, page 17, there appears to be a deletion of the title of SNIE 10-12-65. This record is a declassified national intelligence estimate on the Soviet Union and International Communism from 1965. (Attachment N from CIA Web site).

(11) Excision of policy advice and decisions. At Vol. A-IV, page 45, there was a deletion of an INR analysis that comments on arguments pro and con for U.S. escalation in the war. There is no conceivable basis for this excision. Similar analyses have been declassified by the State Department. See, e.g., “Where Do We Go From Here?” INR, 24 June 1965 (Attachment O).

(12) Excision of the North Vietnamese negotiating positions. References to the North Vietnamese negotiating positions are taken out at Vol. A-V, page 22, and Vol. A-VI, pages 25-6. The State Department has fully declassified the negotiating volumes of the Pentagon papers. See, e.g. Excerpt from “United States-Vietnam Relations, 1945-1967. VI. C.4. Settlement of the Conflict. Negotiations, 1967-1968. History of Contacts.” (Attachment P). This and similar items can be found in the folders of “Robert McNamara Papers, Pentagon Papers” series at the Lyndon Baines Johnson Library.

(13) Deletion of a reference to a declassified document. At Vol. A-VI, page 12, discussion of NIE 53-66 is deleted. NIE-53-66 itself has been declassified (Attachment Q).

(13) Excision of INR bombing analysis. At Vol. A-VI, page 12, INR bombing analysis is deleted. This represents minor military minutiae which should not be under any secrecy protection. Many CIA analyses of the bombing have been declassified. See e.g., SNIE 10-11-65 (Attachment R).

(14) Excision of standard military information. At Vol. B-IV, page 30, a reference to U.S. naval operations at Tonkin Gulf is deleted. This is not intelligence material, nor is an INR opinion of the importance of the U.S. activities “intelligence” per se. The US Navy has long declassified its documents related to its operations at Tonkin Gulf. See, e.g., Cable from U.S, Navy. Pacific Fleet, Commander-in-Chief, to Joint Chiefs of Staff, 2 August 1964. Secret (declassified). (Attachment S).

(15) Deletion of pacification materials and titles of memos. At Vol. B-VI, pages 10-11, the deletion appears to be pacification materials and titles of memos. Many items far more sensitive on pacification have been declassified. See e.g., “The Intelligence Attack on The Viet Cong Infrastructure,” Central Intelligence Agency, 23 May 1967. Secret (declassified) (Attachment T). A number of similar items can be found in the files of the Komer-Lenonhart series at the Lyndon Baines Johnson Library.

As you can see from the above specific arguments, there are extensive declassified materials on the topics addressed by the released documents. As the District Court for the District of Columbia has explained “It is a matter of common sense that the presence of information in the public domain makes the disclosure of that information less likely to ‘cause damage to the national security’” *Washington Post Co. v. Department of Defense*, 766 F. Supp. 1, 8 (D.D.C. 1991). Excising these documents and removing reference to publicly acknowledged – and widely known – matters casts doubt on the integrity of the declassification process. Accordingly, for all these reasons, I urge you to reconsider the deletions required by the Department of State. I look forward to your reply within the 20 business day statutory timeframe provided by the Freedom of Information Act. Please feel free to contact me with any questions or concerns.

Sincerely,

Meredith Fuchs
General Counsel

cc: Thomas Blanton
John Prados